

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KICHUL LEE, *et al.*,

Plaintiffs,

v.

MICHAEL MUKASEY,
Attorney General *et al.*,

Defendants.

Case No. C04-0449RSL

ORDER REGARDING SECOND
MOTION TO ENFORCE
COMPLIANCE

This matter comes before the Court on plaintiffs’ “Second Motion to Enforce Compliance.” Dkt. # 210. Plaintiffs seek (1) a declaration that defendants are not in compliance with the terms of the Settlement Agreement because a high percentage of class members’ applications have been pending for more than the “normal Seattle District Office processing time” (Settlement Agreement at ¶ 4C) and (2) an order compelling defendants to make additional information available to ensure future compliance with the Settlement Agreement.¹

“The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally.” O’Neil v. Bunge Corp., 365 F.3d 820, 822 (9th Cir. 2004). Under Washington law, the purpose of contract interpretation is to ascertain the parties’ intent at the time of contracting. See,

¹ Defendants’ unopposed motion to supplement their opposition (Dkt. # 215) is GRANTED.

e.g., Berg. v. Hudesman, 115 Wn.2d 657, 663 (1990) (quoting A. Corbin, The Interpretation of Words and the Parol Evidence Rule, 50 Cornell L. Quar. 161, 162 (1965)). “Determination of the intent of the contracting parties is to be accomplished by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.” Stender v. Twin City Foods, Inc., 82 Wn.2d 250, 254 (1973).

As noted in the Court’s prior order, the phrase “normal Seattle District Office processing time” is purposefully vague. The parties intended to ensure that class members were treated the same as other applicants for naturalization without unduly limiting USCIS’ ability to investigate and consider each application on its merits. That does not mean that the phrase is meaningless, however. A review of USCIS documents issued since the Settlement Agreement was signed shows that the normal processing time for N400 applications filed before June 2007 fluctuated between five and ten months.² Although the five-to-ten month time frame is not a guarantee, where an application is subject to delays beyond what is normally expected, the burden falls on defendants to explain why it could not be adjudicated within the “normal” processing time.

Defendants have identified eight reasons why an application could be delayed beyond ten months:

- (1) USCIS is awaiting the results of the background check from the FBI;
- (2) USCIS is awaiting the criminal history records from the FBI; (3) USCIS is awaiting a response from the applicant to a request for evidence; (4) the application is pending eligibility review by an Adjudications Officer; (5) the

² See, e.g., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&reqPageNum=13> and <https://egov.uscis.gov/cris/jsps/officeProcesstimes.jsp?selectedOffice=73>. There is evidence that the five-to-ten month time frame may not apply to applications filed after June 1, 2007. USCIS experienced a significant increase in the number of applications filed last summer and, despite efforts to hire additional immigration officers, the increase is already having an adverse impact on the “normal” processing time for N400 applications in the Seattle Field Office.

1 application is pending review by a Supervisor; (6) the application [sic] is
 2 pending an interview; (7) the applicant has moved outside the jurisdiction
 3 of the Seattle Field Office and their application has been transferred to the
 appropriate office; and (8) the applicant failed to sign the application.

4 Opposition at 3. It is not entirely clear which of these eight reasons defendants believe
 5 justifies an extraordinary delay in processing an application. The Court will therefore
 6 address each of them.

7 Reasons numbered 1, 2, 4, 5, and 6 are too general to explain any particular
 8 delay suffered by one or more class members. By entering into the Settlement
 9 Agreement, defendants voluntarily undertook a contractual duty to adjudicate class
 10 members' N400 applications within the "normal Seattle District Office processing time."
 11 By definition, the "normal Seattle District Office processing time" includes the time it
 12 takes to conduct criminal history and background checks, review the file, conduct an
 13 interview, and reach a decision on the application. The fact that another agency is
 14 involved in the review process does not, in and of itself, excuse defendants' failure to
 15 comply with the terms of the Settlement Agreement. Nor can the foreseeable and
 16 expected need for agency action justify extraordinary delay. Defendants have made no
 17 effort to explain the discrepancy between the "normal" processing time in the Seattle
 18 Field Office and the significant delays experienced by many of the individual class
 19 members. Nor have they presented evidence regarding the progress made on any
 20 particular application or the efforts they have undertaken to obtain information from the
 21 FBI in a timely manner. The fact that N400 applications go through a series of reviews at
 22 two different agencies does not explain why certain applications are processed within five
 23 to ten months and others have languished for years.

24 On the other hand, an incomplete application or an applicant's failure to
 25 respond to a request for additional information can justify an extraordinary delay.³
 26

27 ³ See Dkt. # 205 at 3 ("The normal processing time, barring an incomplete application or the
 28 recalcitrance of the applicant (neither of which is alleged here), is seven months.").

1 Defendants have provided evidence that one class member, Khai Cao Truong, submitted
2 an unsigned application and has not remedied the situation since it was brought to his
3 attention in March 2007. The Court finds that the delay in adjudicating this particular
4 application is reasonable and no breach has been shown. Defendants have not, however,
5 presented sufficient evidence from which the Court could conclude that any other
6 applicant caused an application to be delayed past the ten month "normal" time frame. In
7 their quarterly status report, defendants generally indicate only that a certain event has or
8 has not occurred.⁴ There is no indication of the date on which the event, such as the
9 filing of a renewed N400 application or the issuance of a request for additional
10 information, took place. It is therefore impossible to tell how much of the twenty-three
11 month delay in processing James Swaka's N400 application, for example, was the result
12 of agency inaction as opposed to the applicant's failure to respond to the N-14 request for
13 information. If the N-14 were issued recently, it would not justify defendants' previous
14 failure to adjudicate the application in the "normal Seattle District Office processing
15 time."

16 Finally, defendants note that two applicants have moved outside the
17 jurisdiction of the Seattle Field Office. Neither party has addressed the legal significance
18 of this change. The Court is unable to determine whether the relocation of a class
19 member releases defendants from their contractual duty to process the renewed
20 application within ten months.

21 Piecing together the information provided by the parties in their
22 declarations, the Court finds that at least thirty-three class members filed their
23 applications for naturalization before June 2007 and did not receive a decision within the
24

25 ⁴ In some instances, the information provided in the status reports is ambiguous and, therefore,
26 unhelpful. For example, a check mark in the column titled "Name checks status" has no inherent meaning
27 because a check mark is not responsive to an inquiry regarding "status." Does the check mark indicate
28 that an applicant has successfully completed the name check process? It could mean that a name check
has been requested or that the FBI has identified a problem such that further delays should be expected.
Defendants' report is so abbreviated that it provides no reliable information regarding the status of the
name check inquiry.

“normal Seattle District Office processing time” of ten months.⁵ Defendants argue that some of these delays were caused by the applicant’s failure to respond to an N-14 request for additional information, but they have failed to produce evidence from which the Court could conclude that the extraordinary delays were the fault of the applicants and not the agency. The Court therefore finds that defendants are not in compliance with paragraph 4.C. of the Settlement Agreement. Defendants shall complete their review and adjudication of these thirty-three applications within thirty days of the date of this Order or shall file a status report stating individualized reasons for any continuing delay.⁶

Plaintiffs have not argued, and the Court declines to find, that defendants have breached their reporting obligations under paragraph 8 of the Settlement Agreement. The Court notes, however, that defendants’ check-filled quarterly report provides very little information that plaintiffs or the Court could use in implementing the agreement. Rather than mandate the production of additional data, the Court has placed on defendants the burden of justifying extraordinary delays in processing class members’ N400 applications. The failure to provide dates for key events in the processing of a

⁵ The thirty-three individuals are:

V. Adamovici	Z. Akhverdyan	N. Amira
J. Cervantes-Torres	P. Chim	K. Chong
O. De Dios	R. Gasparian	X. Huang
W. Hom	R. Katru	M. Kawcznksi
P. Le	H. Lee	L. Mekkhavong-Davis
R. Morales	Tinh Nguyen	Tu Nguyen
X. Nguyen	C. Ocampo	K. Oh
M. Olkusz	L. Pham	N. Prasad
A. Simongkhonh	B. Singh	H. Singh
S. Sou	M. Spacek	J. Swaka
B. Vo	M. Watson	B. Yevstingneyev

Mr. H. Singh’s application was recently denied.

⁶ Because any analysis of defendants’ future compliance with the Settlement Agreement requires guidance regarding the “normal” processing time for applications filed on or after June 1, 2007, the Court will accept defendants’ representations and presume that the “normal Seattle District Office processing time” for such applications is fifteen months. Defendants have the burden of explaining any processing delays in excess of that time frame. The fifteen-month presumption is rebuttable, such that the parties may submit evidence that the processing time for applications filed on or after June 1, 2007, is, in fact, longer or shorter than that presumed by the Court based on the current record.

1 particular application will make it very difficult, if not impossible, for the Court to
2 conclude that an extraordinary delay is reasonable and justified.

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4 For all of the foregoing reasons, plaintiffs' motion to enforce compliance is
5 GRANTED in part and DENIED in part.

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7 Dated this 19th day of May, 2008.

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10 Robert S. Lasnik
11 United States District Judge
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